IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 860 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANUSINH BALUSINH RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MR PK JANI for Petitioner

MR HL JANI, Learned APP for Respondents

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard Mr. Jal Unwala learned advocate for the petitioner and Mr. H.L.Jani, learned APP for respondents.

1. The petitioner has challenged the externment order passed by the respondent no.2 - learned Sub Divisional Magistrate, Mahesana dated 21.2.1999 in exercise of power conferred under Section 56 (a) of the Bombay Police Act, 1951 (for short "the Act"), whereby the petitioner is externed from the area of District Mehasana, Patan, Banaskantha, Sabarkantha, Ahmedabad, Gandhinagar and Ahmedabad City for a period of 2 years from the date of service of the order.

2. That the notice under Section 59 of the Act dated 30.8.1999 was issued after registering the case no. 28 of 1999 against the present petitioner by the learned Sub Divisional Magistrate on receipt of police report made by P.I. Vijapur Police Station dated 5.8.1999. The report made by P.I. Vijapur Police Station alleges that petitioner is a bootlegger and has been indulging into illegal supply of liquor and despite repeated raid, the petitioner could not be prevented from indulging into his prejudicial activity. That in the year 1997, prohibition case no. 356 of 1997 was registered at Vijapur Police Station on 31.12.1997. Similarly, Prohibition Case No. 18 of 1998 was registered on 14.1.1998 and Prohibition Case No. 102 of 1998 was registered on 24.4.1998. While Prohibition Case No. 318 of 1999 is registered on 1.8.1999 at Vijapur Police Station. Over and above that, three chapter cases under Section 93 of the Bombay Prohibition Act were registered and dispossed of. On the basis of the said facts, show cause notice was served to the petitioner to which petitioner filed reply and made representation. However, respondent no.2 in consideration of material passed the impugned order on 21.2.1999 as stated hereinabove.

3. Mr. Unwala learned advocate for the petitioner has sought to assail the impugned order contending that except registration of one Prohibition Case in the year 1999, no other criminal cases have been registered against the petitioner and yet, allegations are made in the name of privilege witnesses that petitioner has been using force and his movement in the said area is causing terror. That the evidence of the said four witnesses do not disclose any incident which is culminated into a cognizable offence against the petitioner and as such, evidence of the said four witnesses being vague could not be used as a foundation to pass an extermment order. It is further submitted that impugned order of externment was challenged by the petitioner under Section 60 of the Act. However, Appellate Authority - Deputy Secretary, State of Gujarat, Home Department, rejected the appeal of the petitioner vide order dated 25.5.2000 which is also

challenged in the present petition. That the Appellate Authority has mechanically considered the papers of the file and has failed to take into consideration that all the cases filled against the petitioner under Prohibition Act were still pending and no conviction was imposed. That material produced before respondent no.2 being vague could not be used as a foundation. The Appellate Authority has observed that petitioner is a bootlegger. That in past prohibitory actions were taken against him. However, without considering any lesser drastic remedy has rejected the appeal.

4. In over all consideration of the facts and circumstances apparent from the record, it appears that material produced before respondent no.2 cannot be said to be sufficient to provide cogent and convincing evidence against the petitioner so as to hold the petitioner as a dangerous person whose movement in a particular area was causing terror and found undesirable. Thus, exercise of power under Section 56 (a) of the Act is based on vague material, the impugned externment order passed by respondent no.2 dated 21.2.1999 cannot be sustained. Similarly, the order of Appellate Authority dated 25.5.2000 being mechanical and without providing any reason to support the order is also bad in law.

5. On the basis of foregoing discussion, the present petition is allowed. The impugned order of externment dated 21.2.1999 passed by respondent no.2 against the petitioner in Externment Case No. 28 of 1999 as well as order passed by the Deputy Secretary, State of Gujarat, Home Department under Section 60(3) of the Act confirming the order of respondent no.2 and rejecting the appeal of the petitioner are hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J)

(vipul)